IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7436 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANSA NAGRIK SAHAKARI BANK LTD.

Versus

REGIONAL PROVIDENT FUND COMMISSIONER OF GUJARAT STATE

Appearance:

1. Special Civil Application No. 7436 of 2001

MR RAVINDRA SHAH for Petitioner No. 1-8

MR BHARAT T RAO for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 30/01/2003

ORAL JUDGEMENT

The present petition is filed seeking a declaration that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") are not applicable

to the petitioner Bank. It is also prayed that a writ of certiorari or a writ of mandamus or a writ, order or direction in the nature of certiorari or mandamus or any other writ, order or direction of a like nature be issued quashing and setting aside the impugned action of the respondent authority in making applicable the provisions of the Act to the petitioner. Besides this, the other reliefs sought for are that the action of the respondent directing the Bank to open Provident Fund Account being No.28204 and direction to deposit contribution every month in it be quashed and set aside, that a direction be issued against the authorities to refund the amount so far deposited by the petitioner Bank in PF Account No.28204 with interest at the rate of 12 % per annum from the date of depositing such amounts till such amounts are repaid, that the impugned Order No.702 dated 15.2.2000, a copy of which is at Annexure 'B' to the petition, Order No.34 dated 27.12.2000, which is at Annexure 'D' to the petition, Order No.540 dated 29.5.2001, which is at Annexure 'G', and Orders No.1085 dated 2.8.2001 & No.1278 dated 17.8.2001, which are produced at Annexure 'I' (Colly.) be quashed and set aside.

2. The petitioner is a cooperative Bank established under the Cooperative Societies Act of the State. It has challenged the order passed by the authorities under the State Act, a benevolent legislation. The Act (Employees' Provident Funds & Misc. Provisions Act, 1952) is brought on the Statute Book, as mentioned by the learned author Honourable Mr.Justice S.R. Roy in his book on the subject, to provide effective social security measures for toiling workers so that it brings prosperity. The object of the Act is to provide protection from the distress and destitution in old age and to see that his family does not suffer utter ruin in case of premature death or disablement. The Act is amended from time to time so as to see that adequate protection is given not only to the worker but to his family also. To ensure the aforesaid object, the Act was amended in the year 1973 and the amount due from the employer as Employees' Contribution to the Provident Fund is made first charge on the assets of the establishment under liquidation to make the Act more effective. It is again amended in the year 1988 to provide for setting up independent machinery to recover outstanding Provident Fund dues and other dues from the defaulting employers. Existing penal provisions are made more stringent by the said amendment. The object as set out in the Act of 1952 in the Preamble is, "to provide for an institution of Provident Fund for employees in factories and other establishments." The statement of objects and reasons for enactment of the Act

of 1952 is as under:

"The question of making some provisions for the future of the industrial worker after he retires for his dependents in case of his early death, has been under consideration for some years. The ideal way would have been specific provision through old age and survivors pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India, the institution of a pension scheme cannot be visualised in the near future. Another alternative may be provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, is that the amount paid to a worker or his dependents would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to the institution compulsorily of contributory provident funds in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly. The institution of a provident fund of his type would also encourage the stabilisation of a steady labour force in industrial centres.

.. .. .."

The main contention raised by Mr.Shah, the learned advocate for the petitioner Bank is that the petitioner was not heard at the time of passing the order, which is produced at Annexure 'D', whereby the petitioner Bank was directed to deposit a sum of Rs.4,42,066.00. It is submitted that it is mentioned in the order itself that it is an ex parte order. For the ready perusal relevant portion of the order is set out below:

"And whereas, a Summon/ Notice under section 7A of the Act was issued to the establishment vide this Office letter No.GJ/ 28204/ ENF.IV/326 dated 6.10.2000 in order to afford him opportunity of representing his case in person or through authorised representative and to produce the relevant records in connection with 7A Inquiry on 16.10.2000, 18.10.2000, 24.10.2000 & finally on 30.10.2000. None appeared on behalf of the establishment and in the interest of the

employees, I do not think it proper to prolong the proceedings, and therefore, decide the matter ex parte." (emphasis supplied)

Mr.Shah strenuously tried to persuade this Court that this is an ex parte order. The portion underlined reveals that the petitioner Bank did not cooperate with the authorities, who gave ample opportunities and therefore, authorities as a last resort passed the order.

3. Mr.Shah, the learned advocate submitted that against this, order was made to the authorities on 4.5.2001 on which an order came to be passed on 29.5.2001, a copy of which is produced at Annexure 'G', wherein it is stated that,

"(1) Regarding para no.I, the contention stated by you is not acceptable and it is considered as irrelevant. The Provident Fund dues have been assessed under section 7A of the Employees' Provident Fund & Misc. Provisions Act, 1952 on the basis of the material produced by you along with monthwise statement. In this regard Shri Arvindbhai M. Patel have been heard during the 7A proceedings on 16.10.2000. Besides, Shri P.P. Panchal, authorised representation have also been heard on 25.10.2000. He has been appraised regarding monthwise payments of Provident Fund dues which was to be submitted on 30.10.2000. Since the aforesaid statements have been received from the establishment, there is no dispute on the amount determined under section 7A of the Act which is based on the statements received from the establishment. The establishment has remitted the dues as per order passed under section 7A." (emphasis supplied)

4. Mr.Shah submitted that there is inconsistency between these two orders. In order dated 27.12.2000 it is mentioned that the order is passed ex parte, while in order dated 29.5.2000 it is mentioned that Shri Arvindbhai M Patel was heard on 16.10.2000 and Shri P.P. Panchal was heard on 25.10.2000 during 7A proceedings. Merely because there is some inconsistency in these two orders the facts do not get changed. The fact remains that these two officers of the Bank were heard by the authorities while passing the order under sec.7A. Therefore, if at all the establishment was aggrieved and wanted to file an appeal against the order it should have

filed in accordance with law.

5. The establishment chose to file review application. The reasons for adopting such stand are not far from understanding. Apparently, the purpose was to put the whole thing in dispute and to delay the payment of dues which the establishment is otherwise under an obligation to pay. The provisions for review are contained in section 7B of the Act.

"7B Review of orders passed under section 7A

--- (i) Any person aggrieved by an order made under subsection (1) of section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order: (empahsis supplied)

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under subsection (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) xxx xxx

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A."

6. In the present case a review application is filed on 5.7.2001. From the memo of review application which

is produced at Annexure 'H' to this petition, Mr.Rao, the learned advocate for the respondent authorities submitted that a review application is to be filed within 45 days from the date of the order. It can be accepted that the phrase "from the date of the order" can be interpreted to mean, "from the date of receipt of the order". The order was received by the establishment on 23.4.2001, it is evident from the xerox copy of the envelope, which is at Annexure 'E' to the petition. In the memo of the review application there is not a word explaining the cause of delay, nor there is prayer for condonation of delay. The provisions of section 7B of the Act lay down the scope of review, but then the memo of review application does not make out a case for review.

7. The establishment has come forward with a dishonest plea that the establishment was not heard at the time of 7A inquiry. It is clear from the order dated 29.5.2001 that not one, but two officers of the establishment were heard and it was only after hearing these two officers and after taking into consideration the material produced by the establishment, like monthwise statements that the authorities passed the order under section 7A of the Act. From the record it clearly transpires that the establishment was bent upon to avoid payment of the amount ordered by the authorities, that is why knowing well that an appeal is maintainable against the order passed under section 7A of the Act, a review application was filed. It can be inferred that this was with a view to delay the payment. After the review application is rejected, the present petition is filed seeking intervention of this Court in a matter where a statutory appeal is provided.

8. Mr.Shah, the learned advocate for the petitioner establishment with a view to explain the filing of the present petition instead of statutory appeal, pointed out a decision of 'the appellate authority' under the Act, wherein it is stated that the appellate authority is not having full infrastructure and other facilities. However, a copy of the said decision is not produced by Mr.Shah. Even if it is so, then also the decision reflects the position which prevailed at the relevant time. That cannot be ground for not filing a statutory appeal. Mr.B.T. Rao, the learned advocate makes a statement that the appellate authority is functioning fulfledged, the said observations are not applicable as on date.

9. Mr.Shah, the learned advocate raised a contention before this Court which according to him could not be

raised before the authorities at the time of 7A inquiry, namely, the Act is not applicable to the present establishment. Mr.Shah relied upon the provisions of section 16(1) of the Act, which reads as under:

"16. Act not to apply to certain establishment. --- (1) This Act shall not apply --

(a) to any establishment registered under the Cooperative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State relating to cooperative societies, employing less than fifty persons and working without the aid of power; or

xxx xxx " (emphasis supplied)

10. Mr.Shah, the learned advocate submitted that the the petitioner establishment is a cooperative Bank and it cannot be said to have indulged in any manufacturing activity and therefore, the provisions of section 16(1)(a) of the Act will not be applicable to the petitioner Bank. He also submitted that the provisions of the Act will not be made applicable to the petitioner Bank, because it does not employ 50 or more persons. Mr.Shah submitted that no significance is to be attached to the words, "and working without the aid of power". If the interpretation advanced by Mr.Shah is accepted, then in cases of establishments which do not carry on any "manufacturing activity" the words, "and working without the aid of power" become redundant, because according to Mr.Shah, the question of working without the aid of power arises only in the cases of manufacturing units and not in the cases of establishments like the petitioner which are service oriented and rendering service to the society.

11. In the present days, to assume an establishment working without the aid of power is if not impossible is definitely very difficult. A Bank works with the aid of power not only for the purpose of light and cooling to the employees and its customers, but also for its computers and other gadgets used in the Bank in providing effective service to its customers. In the 21st Century to contend that an establishment like cooperative Bank working in cities is working without the aid of power is ridiculous. Therefore, the contention of Mr.Shah is turned down. Therefore, if on this ground alone the petitioner establishment wanted the authorities to hold that the provisions of the Act are not applicable, the same has no substance hence rejected. Mr.Shah cited some

decisions of Patna High Court, Allahabad High Court, to contend that the words, "and without the aid of power" are to be considered to mean that they will have application only to manufacturing units. This Court is of the opinion that in view of the aforesaid discussion these decisions have no application to the facts of the case on hand. Therefore, they are not discussed in detail.

12. Mr.Shah next contended that as is mentioned in the order dated 15.2.2000 whereby the authorities informed the petitioner establishment that the provisions of the Act are applicable to the establishment with effect from 1.4.1997 and for that the authorities have relied upon a report dated 1.12.1999 of one Shri P.C. Valan, Enforcement Officer, Mehsana. He submitted that a copy of the report is not made available to the petitioner establishment. Mr.Shah is not able to point out any document or any averments whereby it could be established that the petitioner establishment had ever demanded a copy of that report and despite that demand the same is not made available to the petitioner. In fact, the contention is raised for the first time and it is nothing but an after-thought. The purpose is also not difficult to be assumed that is, avoiding payment of legitimate dues which are ordered to be paid.

13. In view of the aforesaid discussion, the present petition fails and the same is dismissed with cost of Rs.7500/- (Rupees seven thousand and five hundred only) and direction that the amount which is payable shall be paid within eight weeks from the date of receipt of this order with interest as applicable under the provisions of law.

14. Mr.Shah, the learned advocate appearing for the establishment states that even if there is no order for deposit, the Bank will deposit the amount within eight weeks. He requested that the order of costs may not be passed. Having found the request reasonable, the same is accepted. The order of cost is cancelled.

15. The petition is dismissed. Rule is discharged. Interim relief is vacated. No order as costs.

(Ravi R. Tripathi, J.)

karim